THE JUDGMENTS

The trial court, on February 27, 1953, ruled that the appellee McCracken had a vested right to have each and every acre of his land within the appellant District supplied with water on the same terms and conditions as every other acre within the District "without discrimination by reason of the extent of his holdings of land." The Supreme Court of California affirmed this ruling on January 24, 1957.

SUMMARY OF ARGUMENT

I. The judgment appealed from rests on adequate non-federal grounds and the appeal does not present a substantial federal question.

The Supreme Court of the Sta of California in the judgment appealed from carefully and meticulously set forth the bases of its judgment and analysis of these bases clearly shows that each and every one of those bases was of an exclusive State character without any roots in Federal law. To make its finding, and the bases of its decision crystal clear, the Court specifically and in so many words excluded from service to its judgment all other bases which had been urged upon it having any connections with Federal law.

II. The judgment appealed from finds ample support in Federal law.

Section 8 of the Reclamation Act of 1902 requires all Reclamation activities to conform to State law and to respect all vested water rights. The Supreme Court of the State of California, the final arbiter on such a question, found appellee to have a right to irrigation water vested under the California Constitution, statutes and decisional law, beyond the reach of the provisions of the proposed contract. Section 8 of the original Act with its mandate to respect vested

water rights in the states is still a cornerstone of Reclamation operations under legislative, judicial and executive interpretations. This respect for vested rights has never been qualified by inquiry into the nature or extent of such rights. It has always been sufficient that the right be vested. The present appeal represents an effort to curtail vested rights under California water law to the point of extinction. The argument that Section 8 of the original Reclamation Act was repealed *pro tanto* by indirect implication is refuted by legislative, judicial and administrative action.

III. A successful appeal in this case would permit the creation of a new and Federal system of water rights in the various Reclamation States.

The contract proposed for validation is in effect an effort to initiate a new and Federal system for the control, appropriation, use, and distribution of water for irrigation in the Western Reclamation States to compete with existing systems in the various states. The new scheme would have its own methods of control, appropriation, use and distribution and would not vest any water right or make it appurtenant to the land irrigated. It would be completely independent of State laws.

IV. The equities in the history of the Central Valley Project all support the judgment.

These equities are:

a. The nature and extent of the water right of a landowner in an irrigation district has been known in California law since 1887, long before the passage of the Reclamation Act of 1902, and had been confirmed by California appellate court decisions a number of years before the Central Valley Project was initiated.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 122

THE IVANHOE IRRIGATION DISTRICT,
Plaintiff,

vs.

ALL PARTIES AND PERSONS, etc.,
Defendants,

THE STATE OF CALIFORNIA,
Defendant and Appellant,

COURTNEY McCRACKEN,
Defendant and Appellee.

On Appeal from the Supreme Court of the State of California

Amicus Curiae Brief in Behalf of the American Farm Bureau Federation and California Farm Bureau Federation

EDSON ABEL
Middletown, California
Attorney for American Farm Bureau Federation California Farm Bureau Federation

Of Counsel:
ALLEN LAUTERBACH
2300 Merchandise Mart
Chicago 54, Illinois
General Counsel, American Farm Bureau Federation

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tional." One would have a right to expect some nearby specifications to support such a broad and unqualified assertion but the Statement contains none and diligent search of the decision has failed to reveal any language genuinely capable of such an interpretation. It is true that the California court discussed various federal statutes but such consideration was purely incidental to their relation to the contracting powers of the appellant Iyanhoe District under California law, and did not in any instance go so far as to even intimate unconstitutionality of any federal statute discussed.

After this delusive and unsupported assumption, the Statement then displays exceptional agility. It is not dismayed by the lack of a legal bridge between the California Court's decision and the federal questions it has fashioned. There being no legal bridge, the Statement proceeds to jump the gap right over to a postulation of a whole series of questions, every one undeniably federal in character but infected with the same basic delusion. These questions all presuppose that the California Court made some determination on matters referred to in them, when the Court at the most merely gave them passing mention. It did not have to decide any of the questions as postulated and carefully avoided even the appearance of doing so. As stated above, the California Court adhered strictly to the question before it which was whether the appellant Ivanhoe District could under California law assume the obligation in the contract with the United States offered for judicial consideration.

Then on page 18 of the Statement, a follow-up and equally erroneous allegation is made that the appeal in the instant case presents the Federal questions previously postulated in the apparent hope that repetition would supply a substance otherwise lacking.

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On Appeal from the Supreme Court of the State of California

Amicus Curiae Brief in Behalf of the American Farm Bureau Federation and California Farm Bureau Federation

Pursuant to the provisions of Rule 42 of this Court, consent of the parties having been obtained, this *amicus curiae* brief in behalf of the American Farm Bureau Federation and the California Farm Bureau Federation is offered for filing in the above-entitled matter. The interest of the parties named stems from the following facts:

At this same point, it is again erroneously assumed:

> "* * * where the federal questions were actually considered and decided by the highest court of the State, references to whether, how and when they were raised in the trial court are not necessary for the purpose of establishing the jurisdiction of the United States Supreme Court * * *"

Using this unfounded assumption as a starting point, the Statement continues its labor in an effort to give substance to the illusion that the California Court declared certain Federal statutes unconstitutional when all that court ever did was to find the provisions of the contract before it to be beyond the lawful powers with which the District had been endowed by California law. It would seem that in view of the California Court's explicitness in this respect, there would be little excuse for appellants to so mislead themselves.

As previously indicated on pages 8-9, *supra*, if Federal questions were raised in the trial court, the California Supreme Court brushed aside consideration of them as unnecessary to its decision.

On page 19 of the Statement, under "A", it is said:

> "The majority of the California Supreme Court concluded that the 160-acre water limitation provisions in all contracts are invalid. The provisions are required by the plain words of federal law * * * and are properly includible under state law * * *"

The implication is that the California Supreme Court unnecessarily went out of its way to interpret the Federal Omnibus Adjustment Act of 1926. This the Court did not do. It did say that *if* the language of the Omnibus Adjustment Act was to be interpreted as requiring the 160-acre limita-

1. The American Farm Bureau Federation is a nonprofit membership argicultural organization incorporated and existing under the laws of the State of Illinois and composed of affiliated organizations in the United States, and the Territory of Puerto Rico, having a total farmer membership of over 1,500,000.

2. The California Farm Bureau Federation is a nonprofit membership corporation organized and existing under the laws of the State of California and composed of over 60,000 farmers actively engaged in various agricultural pursuits within the State of California.

3. One of the primary purposes for which both of said organizations were established and are maintained by their respective memberships is the advancement of the economic interests of their members and all farmers generally in the States of the United States and Puerto Rico; this purpose also includes the objective of improvement of the conditions under which agricultural operations are conducted, including those which are carried on with the aid of irrigation.

4. The issues in the above-entitled matter include the integrity of the water laws of the separate individual 17 Western States and the basis on which farmers are to secure for the future the irrigation water necessary to their agricultural activities; specifically, one of the issues is whether irrigators under Federal Reclamation projects are to obtain irrigating water supplies on terms and conditions prescribed by their own experience or are to have those terms and conditions established by those much farther removed, physically as well as mentally, from actual operations. Furthermore, the effect and influence of the determination of this issue herein could quite conceivably

extend far beyond the area directly affected to irrigation practices throughout the United States. The parties hereto are solely concerned, and properly so, with a specific controversy as appears from their briefs. Since, for the reasons previously stated, the issues and their ramifications are much broader in scope and more far-reaching in their effects than those briefs would suggest, the American Farm Bureau Federation and the California Farm Bureau Federation without broadening the issues desire to present additional information and arguments.

5. By action of their respective memberships, both of said organizations are committed to policies embodying maximum local control in the control, appropriation, use and distribution of water used in irrigation, with the rights therein vested in the beneficial users thereof; that such policies have been found by said organizations through decades of practical experience to result in more harmonious administration in the control, appropriation and distribution of water for irrigation and in more efficiency and economy in the beneficial use thereof; that the basic issues in the above-entitled matter are whether for the future there shall be more or less of such local control and whether or not there shall be Federal as well as State systems competing in the control, appropriation, use and distribution of water for irrigation and the rights, if any vested therein.

6. Consents of counsel appear herein as an appendix.

For the foregoing reasons, the American Farm Bureau Federation and the California Farm Bureau, as representatives of agriculture and particularly of that segment

thereof dependent on irrigation, in the following brief present for the consideration of this Court certain aspects of the controversy related to the issues involved in the above-entitled matter. The brief, supporting the judgment of the Supreme Court of the State of California follows this Statement of interest.

Respectfully submitted,

EDSON ABEL

Attorney for American Farm Bureau Federation
California Farm Bureau Federation

Of Counsel:

ALLEN LAUTERBACH
2300 Merchandise Mart
Chicago 54, Illinois
General Counsel, American Farm Bureau Federation

In the Supreme Court of the United States

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COURTNEY McCRACKEN,
Defendant and Appellee.

On Appeal from the Supreme Court of the State of California

Brief in Behalf of the American Farm Bureau Federation and the California Farm Bureau Federation Supporting the Judgment

POSITION OF AMICUS CURIAE

The American Farm Bureau Federation and the California Farm Bureau Federation in this brief support the judgment of the Supreme Court of the State of California on the following grounds:

I. The judgment appealed from rests on adequate non-federal grounds and the appeal does not present a substantial federal question.

II. The judgment appealed from finds ample support in Federal law.

III. The contract proposed for validation is in effect an effort to initiate a new and Federal system for the control, appropriation, use and distribution of water for irrigation in the Western Reclamation States to compete with existing systems in the various states.

IV. The equities in the history of the Central Valley Project all support the judgment.

STATEMENT OF THE CASE

The facts here stated will for the most part only supplement those appearing elsewhere in the record and will be repetitious only to the extent necessary clearly to present the position and arguments of *amicus curiae*.

This case arose as an *in rem* proceeding authorized under the laws of the State of California to validate financial commitments assumed by irrigation districts created under California statutes. This validation was required of the Ivanhoe Irrigation District by Section 42 of the proposed contract (Exhibit A) which is the subject of this proceeding. The instant action was initiated in October of 1949 and judgment was entered on February 23, 1953. The purported contract in question is a combined affair wherein it is attempted to couple in a single agreement the obligation to repay the construction cost of a distribution system as required under Section 9(d) of the Reclamation Project Act of 1939 (53 Stat. 1187) with an obligation to take and pay for water from the Central Valley Project delivered to the distribution system purportedly under terms and conditions prescribed by Section 9(e) of the same statute.

The United States is obtaining the water supply for the Central Valley Project by appropriations in its own right under California law for the use and benefit of the Central Valley Project, by assignments of rights under applications made by the Director of Finance of the State of California for the use and benefit of the Central Valley Project and the landowners to be served from the Project, by acquisition of riparian, appropriative and prescriptive water rights in the San Joaquin River once held by Miller & Lux, Inc., and others, and finally, by assignment to it of appropriative rights held by the Madera Irrigation District. All of the water rights so acquired and now held are founded in the water laws of the State of California and were the voluntary acquisitions of the United States.

The contract in issue here would require the appellant Ivanhoe Irrigation District, to limit the deliveries of water to appellee McCracken to the entitlement of a tract of 160 acres designated by him, and leave him without any water service as to the remainder of his 309 acres, notwithstanding that under California Irrigation District law each of the 149 acres discriminated against had paid and for the future was obligated to pay equally with each favored acre its proportionate share of the total cost of the water rights, water supplies and other District services related to irrigation water distribution, including its proportionate share of all assessments levied to pay for the water from the Central Valley Project of which it would be deprived.

Appellee opposed validation of the contract between the United States and the Ivanhoe Irrigation District on various statatory and constitutional grounds and particularly on the ground that the acreage limitation provision in the contract—to 160 acres in his case—was not applicable and was invalid as to him and his property within the district as violative of his vested rights under the protective provisions of the California Constitution.

b. Reclamation officials cannot claim to have been taken by surprise but must be held to have had knowledge of the nature of a California irrigating water right when they entered upon the Project development in 1935.

c. The Central Valley Project was designed and is being operated to supply *supplemental* irrigation water to areas already under a high state of irrigated cultivation with a partial water supply and the acreage limitation is used to restrict the use of both supplies.

d. The water rights under California law voluntarily acquired by the United States for the benefit of the Central Valley Project in accordance with Reclamation law must be given their full value under State law.

ARGUMENT

I. The judgment appealed from rests on adequate non-federal grounds and the appeal does not present a substantial Federal question.

THE BASES OF THE DECISION OF THE CALIFORNIA SUPREME COURT.

The California Supreme Court left no doubt as to the bases of its decision. After extensive review of the factual situation, the Court set forth its conclusions as follows (App.* 63-4):

"In accordance with the foregoing it is concluded:

"(1) That the plaintiff is an irrigation district duly organized, existing and operating as such under the laws of this state.

"(2) That the title to the unappropriated domestic waters of the state is in the State of California in trust for the water users of the state as bene-

*App. refers to the appendix to Appellants' jurisdictional statement.

ficiaries and such waters are subject to appropriation under the laws of the state.

"(3) That the United States as assignee of appropriative rights, as original appropriator thereof, and in the acquisition of other rights for the same purpose stands in the same relation to such beneficial owners as does the state, namely, as trustee for such beneficial owners and is answerable for the faithful performance of that trust.

"(4) That in distributing the water contracted to be delivered to the District, the United States does so as a purveyor of water at a price for the benefit of the water users of the District.

"(5) That in so delivering the water to the District it is not competent for the United States or the District, either or both, to discriminate against the present or potential water users in the District on the basis of the amount of land owned by them, and that the 160-acre limitation contained in the original Reclamation Act is inapplicable to the subject matter of the contract and improperly contained therein.

"(6) That insofar as the contract provides for the construction of works for the storage and distribution of water to and by the District, the relationship of the parties is that of contractor and contractee. Upon the completion of the construction work the District is obligated under the law to pay for the same within 40 years in equal annual installments. Upon the completion of such payments the District is entitled to ownership of the works and property of the storage and distribution system free from any claims of the United States.

"(7) That insofar as the contract provides for furnishing water to the District at a price the

> United States in acting as a purveyor of domestic waters of the state to the District, under federal law, is bound to observe and comply with the laws of the state with reference to the rights which are vested in the water users being served or entitled to be served. In this respect neither the state nor any of its agencies may contract or otherwise provide that the distribution of water to those for whose benefit the right to the water was acquired may be arbitrarily discontinued.

"The judgment is affirmed."

A careful analysis of these conclusions and their supporting discussions demonstrates beyond the peradventure of a doubt that they rest solely upon the Constitution, statutes and decisional law of the State of California. The California Supreme Court adhered strictly to the question of the statutory and constitutional powers of the Ivanhoe Irrigation District under California law to contract with anybody, including the United States, to the extent attempted in the contract proposed for validation. The decision rather obviously did not concern itself with any powers, authorities or attributes of the United States; by its own terms it limited its determination to the question of the power of the appellant District under California law to contract away the vested rights of the appellee.

Just prior to setting forth the foregoing conclusions of law upon which it rested its decision, the California Supreme Court expressly discarded all other issues offered for its consideration in the following language (App. 62):

> "The trial court in its findings of fact and conclusions of law declared the contract to be invalid on numerous additional grounds not carried into the judgment. Conclusions that the contract is uncertain, lacks

mutuality, improperly prevents changes in the boundaries of the district, provides unreasonable security measures to the United States, and other conclusions not necessary to the judgment, are insufficiently supported when considered in connection with the views herein expressed as to the terms under which the parties may properly contract."

In other words, the Supreme Court explicitly limited the bases of its decision to the conclusions which it specifically set forth in its decision (App. 63-4) and, as has been commented on, explicitly excluded all other possible grounds for its decision (App. 62).

ARGUMENT ON ABSENCE OF SUBSTANTIAL FEDERAL QUESTION.

On the basis of the California Supreme Court's own conclusions of law, it is apparent that that court found it unnecessary to, and did not, go beyond California Constitutional statutory and decisional law to secure the bases necessary to the judgment it reached. It is true that the California Court discussed Federal law in some of its aspects but such discussions as were indulged in were obviously incidental in nature and served as no part of the basis for the Court's decision. Divested of incidentals, the decision of the California Court held that appellee McCracken was the possessor of certain vested rights under California law which appellant Ivanhoe Irrigation District, a creature of California law and possessed only of California endowed powers, proposed by its contract with the United States to violate; that the California Constitution prohibited such a violation. A more apparent exclusively State-supported result could hardly be conceived.

Under the circumstances, the following rule of *Herb v. Pitcairn*, 324 U.S. 117, 125-6 (1945), clearly applies:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds * * * The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our jurisdiction. Our only power over state judgments is to correct them to the extent that they inaccurately adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we correct its views of federal laws, our review could amount to nothing more than an advisory opinion."

So also the pronouncement of Mr. Chief Justice Stone in *Flournoy v. Wiener*, 321 U.S. 253, 262, to the effect:

> "* * * we have repeatedly held that where the judgment of a state court rests in part on a non-federal ground adequate to support it, this Court will not consider the correctness of the decision which the state court also made of a federal question otherwise reviewable here."

The foregoing decisions establish a rule which is not difficult of application in the absence of confusion, purposeful or otherwise.

With such limited consideration, this brief adopts the affirmative presentation of the appellees on the issue, and turns its attention to the search of the Jurisdictional Statement (hereinafter referred to as Statement) for some legitimate federal question.

THE STATEMENT FAILS FACTUALLY TO DISCLOSE FEDERAL JURISDICTION.

On the ground of relevance, attention is called to the formal and explicit statement of the California Supreme Court that the trial court "declared the contract to be invalid on numerous additional grounds not carried into the judgment which were insufficiently supported when considered in connection with the views expressed in its decision." This comment is relevant because appellants go behind this Court-established barrier in their search for jurisdiction. The very points which the California Court rejected as having no bearing on its decision are dragged back into use, to bolster assertions of the existence of Federal questions refuted by the record properly before this Court. Perhaps this explains why the trial court's memorandum opinion (which is not a part of the record) is included as an appendix to the Statement rather than findings of fact and conclusions of law on which the trial court based its judgment.

In an effort to piece together the jurisdictional base of a substantial federal question appellants wander far outside the limits set by the language of the California Supreme Court's decision. Notwithstanding that Court's repeated declarations that it was concerned only with the lawful powers under California laws of the appellant District to assume the obligations of the proposed contract which is the subject of this proceeding, appellants have consistently and continuously gone far afield in an effort to bring the California Court's decision within the realm of federal jurisdiction by consistently, continuously and erroneously treating the decision as based on federal law.

Illustrative of this effort is the bald averment in the Statement, page 6, that "the California Supreme Court has held * * * that certain federal statutes are unconstitu-

tion in the instant contract, the Omnibus Act ceased to be an "applicable" federal law by reason of objections resting in the Constitution and statutes of California (App. 50). So far as the provisions referred to as being "properly includible under state law" are concerned, the question is settled by the final judgment of California's highest court that they were not.

On page 21, the Statement includes an implication that the California Supreme Court used its own interpretations of the Omnibus Adjustment Act and Section 8 of the Reclamation Act of 1902 to reach certain of its conclusions. Reference to the language of the decision (App. 50-51), shows clearly that this is a misinterpretation of what the California Court actually said. That tribunal merely held that the theory of appellants would be sound only *if* the United States was "the owner absolute of the domestic waters of the state with the right to the use thereof freed from trust relationship on behalf of the real owners thereof, namely, the water users in the district." However, the Court held that, on the contrary, "the title to the water to be purveyed is not an unlimited title in the United States." This, of course, is a conclusion reached strictly on the basis of California water law and is not dependent in any way on the federal statutes appellants desperately seek to inject into the consideration.

On page 22 of the Statement appears:

> "The majority of the Court also held invalid *as a matter of federal law* the article found in each district's contract providing that title to all of the project works * * * " (Italics supplied.)

The only trouble with this allegation is that there is nothing in the decision either to support or even suggest it. It is to be noted that the Statement makes no attempt to

indicate the particular point in the decision where this finding is supposed to have occurred. The decision shows very clearly that Federal law had nothing to do with the actual holding of the Court; it was pure California law. The California Court merely held that if the appellant District was buying something, California law required that it obtain the article paid for.

On page 23 appears another very apparent misconstruction of the Court's decision. It is said:

> "Finally, the majority concluded that the provisions of the contracts with the United States relating to delivery and payment for water supply are illegal * * * "

The Court held that the provisions referred to were beyond the power of the District to accept, which obviously is vastly different from the construction used in the Statement. Here again, appellants argue the objectionable provisions are authorized by California law after the California Supreme Court had already ruled they were not.

It is submitted that the Statement after diligent search fails completely to fashion any substantial Federal ground for the jurisdiction of this Court but on the contrary the very specifications in the Statement, when appraised factually, demonstrate the fidelity with which the California Supreme Court kept constantly before it the only question for its decision and that was, had the Iyanhoe Irrigation District, an agency of the State of California, been endowed by the statutes and the constitution of California with the powers necessary to permit it to enter into the contract before the California Supreme Court for consideration. That question having been decided adversely to the appellant District on a basis of strictly California law, the appeal is wholly devoid of Federal issues and without merit.

II. The judgment appealed from finds ample support in Federal law.

It is submitted that even if the instant appeal is regarded as having some Federal undertones, Federal law itself upholds the judgment. While the result reached by the California Supreme Court is based on adequate State grounds, the same result would follow as well from the proper interpretation of relevant Federal Statutes.

This conclusion flows from the fact that nothing has occurred in Reclamation history to weaken the force and efficacy of Section 8 of the Reclamation Act which has been a cornerstone of Reclamation policy since its inception.

The ensuing discussion of its legislative, administrative and judicial treatment, in that order, will show that Section 8 still retains all of its original poteney and efficacy and that its coverage has not been lessened.

ITS LEGISLATIVE TREATMENT

Appellee's water right, even though of an inchoate nature is a vested right under California law. This is the holding of *Inyo Consolidated Water Co. v. Jess*, 161 Cal. 516, 520, 119 P. 534, which is a leading California case on the point. This rule is referred to in the judgment appealed from. It will be noted from the *Jess* case, that the incipient right, obtained by filing a notice of appropriation is an interest in realty which becomes vested in the appropriator, is transferable, and would support an action in quiet title. As such a vested right, it is entitled to the full protection of the provisions of Section 8 of the original Reclamation Act.

Appellants claim that Section 8 has in effect been repealed *pro tanto* by provisions to be found in Section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649, 43 U.S. D.A. 423e). They do not argue the point. They just assume the fact from a superficial consideration of the two pro-

visions. They do not say how much of Section 8 is left or how much of a vested right remains in a beneficial water user after giving effect to their proposed pruning.

To facilitate the subsequent consideration Section 8 of the original Reclamation Act is set forth at this point:

> "That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided*, That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right."

Ever since the beginning of Reclamation, Section 8 has been pointed to with pride by legislators and administrators as according to local law of water rights the respect to which local experience, ideas and ingenuity were entitled. In effect, Section 8 recognized that the beneficial users of irrigating water could more easily and readily develop rules and regulations governing the control, appropriation, use and distribution of irrigating water most adaptable to their needs and conditions. In fact, as will be seen, in 1902 in passing the Reclamation Act, Congress knew that some of the rules and regulations already adopted "were well nigh perfect" in their conception and operation. Congressional intent was then to take advantage of these local developments and to

save the Government from the trouble, responsibility and expense of providing a substitute for the local control which Congress then found so satisfactory. This policy has been adhered to throughout Reclamation history and this Court has consistently called attention to the statutory requirement that the administrative ageney abide by the Congressional direction found in Section 8.

Of course, if Section 8 of the original Reclamation Act is held to have been modified by Section 46 of the Omnibus Adjustment Act, it is modified as to all of the rest of the Reclamation States in the West. The proposed application of the acreage limitation provision of the *Omnibus Act* to the appellant District unquestionably would constitute a substantial interference with the laws of California "in the control, appropriation, use and distribution of water used in irrigation," and would unquestionably affect and actually extinguish vested water rights of the appellee acquired under California's Constitutional, statutory and decisional law. Not only this, but under the interpretation of the Bureau of Reclamation as evidenced by the contract, despite the Congressional directive, "the right to the use of water acquired" under the Act would *not* be appurtenant to the land irrigated and beneficial use would *not* alone be the basis, the measure, and the limit of the right."

Nullification of this very core of Section 8 in California would open the way for similar denials of water users' irrigation water rights in other states and the respect for state water rights, long the proud claim of the Bureau of Reclamation, would fade into oblivion.

Appellants claim that the present proposed application of the *Omnibus Adjustment Act's* acreage limitation is merely a continuation of the policy of the original Reclamation Act expressed in Section 5 of that statute. They wholly

fail to recognize the vast difference between a restriction voluntarily accepted under that Section 5 and one imposed by force of law on a protesting victim.

It is submitted that there is absolutely nothing in the history or background of Reclamation law which supports the contention that Congress ever intended anything of the kind. In fact, all of the indicia of legislative intent commonly used to ascertain what Congress proposed to accomplish points decidedly in exactly the opposite direction.

Congress had some very definite ideas as to what it wanted to accomplish in enacting Section 8 of the original Reclamation Act. In House Report No. 1468, 57th Congress, 1st Session, which Representative Mondell submitted with the bill, it was said:

On page 6:

> "Section 8 recognizes state control over waters of non-navigable streams such as are used in irrigation, and instructs the Secretary of the Interior in carrying out the provisions of the act to conform to such laws. It also provides that nothing in the act shall be held as changing the rule of priorities on interstate streams. In order that the water rights acquired under the provisions of the act shall be of the character most approved by centuries of irrigation practice, and such as will absolutely insure the user in his right and prevent the possibility of speculative use of water rights, the character of the right which is contemplated under the act is clearly defined to be that of appurtenance or inseparability from the lands irrigated and founded on and limited by beneficial use. Under this section uniformity of record of the rights is secured and the rules of priorities of rights are not disturbed, while the cost of maintaining the administrative machinery of water distribution is placed on users and the states; the Government is free from all expense or responsibility when the projects are completed and paid for. The character

of the water rights contemplated being clearly defined, the Secretary of the Interior would not be authorized to begin construction of works for the irrigation of lands in any State or Territory until satisfied that the laws of said State or Territory fully recognized and protected water rights of the character contemplated. This feature of the bill will undoubtedly tend to uniformity and perfection of water laws throughout the region affected."

On page 8:

"The American irrigator, beginning with the handicap of a woeful lack of knowledge of the subject and an inherited common-law rule fatal to its solution, has acquired a vast fund of theoretic knowledge and practical experience. He has been instrumental in the adoption of State constitutional provisions, the enactment of laws, the adoption of rules and regulations, and the establishment of customs relative to the use of water in irrigation and in the arid region which, in some states, are well-nigh perfect, and in all are a distinct advance over former conditions. The bill recognizes the control of these local laws in matters of recording appropriations of water and in establishing and maintaining the rights of users, but as the laws of some of the States and Territories involved recognize water rights varying considerably in character, and it was thought best that the water rights provided under Government works should be of the most ideal character, recognizing clearly the principle of public control over waters used in irrigation, the rights are made appurtenant to the land irrigated on the basis of beneficial use as the best expression of this principle and as an effectual bar to speculative ownership or control of water."

These excerpts clearly demonstrate how important the principles of Section 8 were regarded by Congress and how basic they were to the whole Reclamation structure as con-

ceived by Congress. No change in this Section has ever been made by Congress. The idea of repeal of any part of it by implication, and indirect at that, is quite fantastic.

As might be expected with legislation of this character, it was no more on the books than patching was commenced. Virtually every session of Congress thereafter saw something added to the original act. Congress must have had a premonition of this as in 1914, in Section 1 of the Reclamation Extension Act (38 Stat. 686) it decreed that the original Act together with all amendments and supplements was to be known as the Reclamation law. This particular supplement extended the construction cost repayment period from 10 years to 20.

By 1926, the financial condition of a substantial number of projects had become so difficult that wholesale adjustments had to be made. Hence, the Omnibus Adjustment Act (44 Stat. 646) in Section 48 of which Congress provided:

> "The purpose of this act is the rehabilitation of the several reclamation projects and the insuring of their future success by placing them upon a sound operative and business basis, and the Secretary of the Interior is directed to administer this act to those ends."

Into this act crept Section 46 which increased the reliance of the administration of the law on irrigation districts, extended the construction cost repayment period to 40 years and required a recordable sales contract on acreages in excess of 160 acres.

It should be noted that in this same Adjustment Act, Section 47, Congress repealed several previously enacted sections of the Reclamation law but did not touch Section 8. It would appear that this is a case where the rule established in *Guessefeldt v. McGrath*, 342 U.S. 308, 319, 72 S. Ct. 338, 91 L. Ed. 342, 350, would apply. There is undoubtedly

at stake constitutional rights of substantial value and the statute involved can fairly be said to be a patchwork of 24 years standing when the section in question was passed. In the case cited this Court said:

> "Certainly, the constitutional problem is not imaginary, and the claim not frivolous which would have to be rejected to decide in the Government's favor. Considering that confiscation is not easily to be assumed, a construction that avoids it and is not barred by a fair reading of the legislation is invited.
>
> "The concern of the Trading with the Enemy Act is with problems at once complicated and far-reaching in their repercussions. Instead of a carefully matured document, the legislation was a makeshift patchwork. Such legislation strongly counsels against literalness of application. It favors a wise latitude of construction in enforcing its purposes."

With this background, appellants claim that Congress intended by this Section to emasculate Section 8 together with its specific and very definite purposes. As will be seen, the Bureau of Reclamation itself never recognized or asserted any such an effect until the present juncture.

The original Reclamation Act was passed for the purpose of disposing of public lands. This served as a constitutional purpose, so long as there were public lands involved but the Central Valley Project having no public lands had to look elsewhere for constitutional authority for its activation. At the time of its initiation, navigation and flood control served this purpose until the "General Welfare" clause came to the rescue.

This sequence of purposes illustrates the fact that at its birth the Central Valley Project was completely *sui generis*. In many of its aspects it still is. In 1935, the great interior Valley of California drained by the Sacramento and San

Joaquin Rivers was in private ownership. The land was and is farmed to many crops in holdings of varying size. In its characteristics, it differs from all previous reclamation projects in that the land is settled throughout in farms, villages and small towns. The Central Valley has a pattern of economics and of farming which has resulted from generations of trial and error. The pattern changes somewhat from time to time as prices of farm products fluctuate. It also changes as the pressure for land increases. However, the general character of the farming industries and of the rural communities has been established for many years.

This summarization is borne out by two excerpts from the original and only feasibility report ever submitted on the Project. This original report of feasibility, dated November 26, 1935, and approved by President Roosevelt on December 2, 1935 (House Document No. 416, 84th Congress, 2d Session, pp. 562-7) merely stated that the Project embodied:

> "* * * a plan for the conservation, regulation, distribution and utilization of the water resources of the Sacramento and San Joaquin Rivers to provide urgently needed water supplies for existing agricultural, industrial and municipal developments in the Sacramento and San Joaquin Valleys and upper San Francisco Bay Region, which contain 3,000,000 acres of settled irrigated and productive land, and a population of 900,000 persons. In addition to providing new water supplies to meet serious problems of water shortage, the Project contemplates the restoration of commercial navigation on the upper Sacramento River, increased flood protection of the Valley lands, and incidentally the generation of about a billion and a half kilowatt hours annually of hydroelectric energy."

Later on:

> "The economic values of the Project are of great magnitude. The Project will not bring into production new

agricultural areas but will maintain present values and civilization. Of the 3,000,000 acres now irrigated, 1,000,000 face acute water shortage, and abandonment is proceeding rapidly."

Thus, it is seen that all of the lands in the Project were already developed to a high state of production and the economic pattern under the American principles of free enterprise had been well established. No new lands were to be irrigated and the water supplied was to be for supplemental purposes. The Project was merely to rescue areas already fully developed and under a high degree of cultivation.

Apparently the economic pattern resulting from the free play of American enterprise is to be destroyed along with a fundamental principle of Reclamation development. The result would be to impose upon a fully developed and exclusively private economy an artificial and inflexible restriction on private ownership of rights in land and water which cannot avoid outright confiscation of property values. Furthermore, the irrigation water furnished by the Project is supplemental in character and this artificial and inflexible restriction, which it is said must accompany the supplemental supply, as a matter of practical water distribution, casts its pall over the entire commingled supply.

ITS ADMINISTRATIVE TREATMENT.

Section 8 of the original Reclamation Act has continued to be recognized as having its full original status under administrative practice and interpretation.

Section 46 of the Omnibus Adjustment Act has never appeared to affect the efficacy and potency of Section 8 under administrative practice and interpretation. Respect

for state water laws has always been the proud claim of the Bureau of Reclamation. Without prolonging the argument on the point, attention is called to an excerpt from a reply to an inquiry by the Regional Director of the Central Valley Project. It is Note 15 appearing in *United States v. Gerlach Livestock Co.*, 339 U.S. 725 at 740:

> "After consultation with the Commissioner of Reclamation and the Secretary of the Interior, the Regional Director, Region II, Bureau of Reclamation, replied to questions concerning the Central Valley Project by the Irrigation Districts Association of California:
>
> "The Bureau of Reclamation does recognize and respect existing water rights which have been initiated and perfected or which are in the state of being perfected under state laws. The Bureau of Reclamation has been required by Section 8 of the Reclamation Act of 1902 ever since the inception of the reclamation program administered by the Bureau of Reclamation. The Bureau of Reclamation has never proposed modification of that requirement of Federal law and, on the contrary, the Bureau of Reclamation and the Secretary of the Interior have consistently through the 42 years since the 1902 Act, been zealous in maintaining compliance with Section 8 of the 1902 Act. They are proud of the historic fact that the reclamation program includes as one of its basic tenets that the irrigation development in the West by the Federal Government under the Federal Reclamation Laws is carried forward in conformity with State water laws. Ample demonstration of the effect of this law and policy of administration, in act, has been given in connection with the Central Valley Project. Water filings made by the State have been obtained by the Bureau of Reclamation by assignment, and vested rights have been acquired by the United States by purchase, the considerations amounting to millions of dollars and being

agreeable to the vendors—all in conformity with State laws. Further, other water rights of landowners which will or may be affected by the operations of the project are being analyzed and appropriate adjustments, giving full recognition of the rights of the landowners, are in the process of being worked out."

Again, we have an excerpt from a Report of the Regional Director, Region II, Bureau of Reclamation, on the Central Valley Project, dated December 1, 1947, approved by the Secretary of the Interior, July 29, 1948, and published as Senate Document 113, 81st Congress, 1st Session at p. 39:

"In conducting irrigation investigations and constructing and operating projects throughout the West, the Bureau of Reclamation fully recognizes and respects water rights established under State law. Not only is this a specific requirement of the Reclamation Act under which the Bureau operates, *but such a course is the only fair and just method of procedure.* This basin report on the Central Valley is predicated on such a policy." (Italics supplied.)

There is no ambiguity in this statement that State water rights would be given their full entitlement. Thus the policy of the Bureau was not modified by the purported requirements of the Omnibus Adjustment Act.

Thus, it will be seen by administrative practice and interpretation, Section 8 of the original Reclamation Act was carried by the Bureau of Reclamation at least to July 29, 1948, at full strength and efficacy. It did not recognize any encroachment by the Omnibus Adjustment Act.

ITS JUDICIAL TREATMENT.

Since the passage of the *Omnibus Adjustment Act,* this Court has had at least three occasions to consider the status and efficacy of Section 8 of the original Reclamation Act

and on each of these occasions has made leading decisions rejecting encroachments upon its full efficacy.

The first of these cases was *Ickes v. Fox*, 300 U.S. 82, 93, 94; 57 S. Ct. 412 (1937). In that case, the Secretary of Interior sought to reduce the water allotment per acre in the Sunnyside Division of the Yakima Reclamation Project from 4.84 acre feet to 3 acre feet, desiring to use the 1.84 acre feet elsewhere. The attempted whittling process was disapproved by this Court in the following language which clearly outlines the issue:

On page 93:

> "Succinctly stated, the case comes to this: The United States, under the Reclamation Act, constructed an irrigation system for the purpose of storing and distributing water for irrigation of arid lands. Respondents own water rights under the system for lands of that kind, and these lands require artificial irrigation to render them productive. So far as these respondents are concerned, the Government did not become the owner of the water rights, because those rights by Act of Congress were made 'appurtenant to the land irrigated'; and by a Washington statute, in force at least since 1917, 'were to be and remain appurtenant to the land'."

On page 94, this Court went on:

> "Although the Government diverted, stored and distributed the water, the contention of petitioner that thereby ownership of the water or water rights became vested in the United States is not well founded. Appropriation was made not for the use of the Government, but under the Reclamation Act for the use of the landowners; and by the terms of the law and of the contract already referred to, the water rights became the property of the landowners, wholly distinct from the property right of the Government in the irrigation works.

Compare *Murphy v. Kerr*, 296 F. 536. The Government was and remained simply a carrier and distributor of the water, with the right to receive the sums stipulated in the contracts as reimbursement for the cost of construction and annual charges for operation and maintenance of the works.

"And in those States, generally, including the State of Washington, it long has been established law that the right to the use of water can be acquired only by prior appropriation for a beneficial use; and that such right when obtained is a property right, which when acquired for irrigation, becomes by State law and here by express provision of the Reclamation law as well, part and parcel of the land upon which it is applied."

This case was followed by *Nebraska v. Wyoming*, 325 U.S. 589, 614, 65 S. Ct. 1332 (1945) which resulted from a controversy over the waters of the North Platte River flowing through Colorado, Wyoming and Nebraska. In this case, Nebraska complained of the amount of water diverted upstream from its users by Wyoming. The United States intervened to claim all of the unappropriated water in the stream and it was in connection with that claim that this Court considered the role of Section 8 of the original act. On page 614, this Court said:

"We have then a direction by Congress to the Secretary of the Interior to proceed in conformity with State laws in appropriating water for irrigation purposes. We have a compliance with that direction. Pursuant to that procedure, individual landowners have become the appropriators of the water rights, the United States being the storer and the carrier * * * Though we assume *arguendo* that the United States did own all of the unappropriated water, the appropriations under State law were made to the individual landowners pursuant to the procedure which Congress pro-

vided in the Reclamation Act. The rights so acquired are as definite and complete as if they were obtained by direct cession from the United States."

Thus, this Court told the Bureau of Reclamation that regardless of ideas it might have on the subject, Congress had directed it to proceed under the laws of Wyoming in obtaining Project water supplies and that it should do so.

The last case is the comparatively recent one of *United States v. Gerlach Livestock Co.*, 339 U.S. 725, 70 S. St. 955 (1950) in which the issue was the right of certain riparian landowners along the San Joaquin River to compensation for loss of water rights resulting from the construction of Friant Dam as a part of the Central Valley Project.

This Court there said in giving full recognition to the Congressional direction found in Section 8:

> "The laws of the State * * * determine the rights and liabilities of landowners and appropriator * * *
>
> "Congress proceeded on the basis of full recognition of water rights having valid existence under state law. By its command that the provisions of the Reclamation law should govern the construction, operation and maintenance of the several construction projects, Congress directed the Secretary of the Interior to proceed in conformity with state laws, giving full recognition to every right vested under these laws. Cf. *Nebraska v. Wyoming*, 295 U.S. 40, 43, 79 L. Ed. 1289, 1291, 55 S. Ct. 568; *California-Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142, 169, 70 L. Ed. 1356, 1364, 55 S. Ct. 725; *Nebraska v. Wyoming*, 325 U.S. 589, 614, 89 L. Ed. 1815, 1829, 1830, 65 S. Ct. 1332; *Silas Mason Co. v. Tax Com.*, 302 U.S. 186, 82 L. Ed. 187, 58 S. Ct. 233 * * * We think it clear that throughout the conception, enactment and subsequent administration of the plan *Congress has recognized the property status of water rights vested under California law.*" (Emphasis supplied.)

This Court also held in that decision at p. 751:

> "The Amendment (1928) was submitted to and adopted by the electors in November, 1928, and now constitutes California's basic water law to which the Federal Reclamation Act defers."

Mr. Justice Douglas had some additional comments in his concurring opinion as follows (p. 759):

> "This Court has recognized, however, that administration of the Act is to be in conformity to State laws. See *Power Co. v. Cement Co.*, 295 U.S. 142, 164. *Nebraska v. Wyoming*, 325 U.S. 589, 614. That was the assumption in *Mason Co. v. Tax Commission*, 302 U.S. 186, a case involving the navigable waters of the Columbia River.
>
> "Whatever doubts there may be are for me dispelled by the administrative practice under the Act, summarized by the Commissioner of Reclamation in a memorandum dated April 19, 1950."

And on p. 761:

> "This Court has often emphasized that weight is to be given to the interpretation of a statute made by an administrative agency. See *United States v. American Trucking Assns.*, 310 U.S. 534, 549; *Labor Board v. Hearst Publications*, 322 U.S. 111, 130. This long course of practice by the Bureau of Reclamation resolves any doubts and ambiguities that arise from the history and wording of the statute."

Thus, it is seen that, whether considered from the standpoint of any branch of Government—legislative, executive or judicial—Section 8 of the original Reclamation Act has not lost any of its potency or efficacy nor has the field it covers been curtailed in any way.

It should be pointed out that in no place has any question been raised as to the extent of the vested right entitled to

respect. Neither in the Congressional discussions nor in the subsequent history of the statute has there ever been the slightest intimation that any part of a vested water right, if such there can be, might be denied the protection intended by Section 8.

FURTHER CONGRESSIONAL ACTION.

After the decision of this Court in *United States v. Gerlach Livestock Co., supra,* and after the Secretary of the Interior had, on July 29, 1948, advised Congress of the consistent policy of the Department of the Interior to respect water rights vested under State laws, Congress on July 2, 1956 passed a supplement to the Reclamation laws (70 Stat. 484) Section 4 of which re-enacted verbatim Section 8 of the original Reclamation Act.

It should be noted that this action by Congress took place on July 2, 1956, more than three years AFTER the trial court had on February 27, 1953, ruled that vested rights under California water laws were beyond the reach of the acreage limitations provided in the Omnibus Adjustment Act. This legislation preceded the decision herein by the California Supreme Court on January 24, 1957.

Furthermore, in presenting this legislation to the Irrigation Subcommittee of the Interior Committee of the House of Representatives, Congressman Clair Engle, the author, had this to say at a hearing on January 24, 1956:

> "The Federal Government cannot give a water right because the Federal Government does not own any water. The water which it takes from the State of California it holds in trust for the purpose of implementing the Central Valley Project. Therefore, water rights accrue under State law."

This is essentially the holding of the trial court in the instant case as well as that of the judgment appealed from.

III. This appeal actually seeks to create in the field of control, appropriation, use and distribution of water used in irrigation throughout the Reclamation States a new and Federal system of water rights to compete with the various existing State systems.

One has only to visualize the situation which a successful appeal herein would create in the water right field in the appellant district and correspondingly in other areas of the West. Under California law a water user has rights which can be asserted and protected in the California courts; they are statutory rights given him by law and to protect them, he need go only to his county seat. Under the proposed contract, which concededly vests no water rights in the users, all that such water user would have would be a contractual right against the Government enforceable probably only in Washington, D. C. The proposed system, if the present appeal is successful, obviously would be devoid of any control by the State of California and the contract with the United States would be the sole and only basis for the distribution of irrigation water in the Central Valley Project and elsewhere where the contract was used. Under statutory law, the user would know at all times where he stood and if changes were proposed, he would have a chance to protest. Under the contract, he would have no such right to be heard.

That this is exactly what appellants have in mind is clearly indicated by the comments in their brief on pages 60 to 80 to the language of this Court in *Nebraska v. Wyoming, supra,* quoting:

> "We do not suggest that where Congress has provided a system of regulation for Federal projects it must give way before an inconsistent state system."

In other words, it is the contention of the appellants that the interpretation of Section 9(e) of the Reclamation Proj-

ect Act which produced the contract under consideration repealed Section 8 virtually while the Secretary of the Interior was assuring Congress of continuing conformity with it.

It may be noted that appellants have not indicated how they will overcome the constitutional hurdle occasioned by their invasion of the reserved jurisdiction of the State.

IV. The equities in the history of the Central Valley Project all support the judgment.

These equities in the order in which they will be discussed are:

a. The vesting of beneficial rights to the use of water under California law in the actual users was the rule long before the original Reclamation Act was passed.

b. Reclamation officials were not taken by surprise but must be held to have had knowledge of this nature of a California water right when they entered upon the Project Development in 1935.

c. The lack of action by the Secretary of the Interior under Section 12 of the Reclamation Extension Act of 1914 to exclude all non-consenting excess landowners from the proposed Central Valley development justifies the conclusion that the development was not regarded as a Reclamation project at its initiation but was converted into one later in life.

d. The Central Valley Project was designed and is being operated to supply *supplemental* irrigation water to areas already under a high state of irrigated cultivation with a partial water supply and the acreage limitation is used to restrict the use of both supplies.

e. Water rights acquired under State law in accordance with Reclamation law and by voluntary act of the United States must be given their full value of State law.

a.

The vesting of water rights under California law in the actual beneficial users was the rule long before the original Reclamation Act was passed.

This discussion will be limited to that phase dealing with irrigation districts as more relevant to the present issue.

The State of California passed its first irrigation district act in 1887 (California Statutes, 1887 p. 29). In that Act, Sections 11 and 13 read in part as follows:

> "Sec. 11. It is hereby expressly provided that all waters distributed for irrigation purposes shall be apportioned ratably to each landowner upon the basis of the ratio which the last assessment of such owner for district purposes within said district bears to the whole sum assessed upon the district; provided that any land owner may assign the right to the whole or any portion of the water apportioned to him."
>
> "Sec. 13. The legal title to all property acquired under the provisions of this Act shall immediately and by operation of law vest in such irrigation district and shall be held by such district in trust for and is hereby dedicated and set apart to the uses and purposes set forth in this act." (last sentence omitted.)

In 1897, this Wright Act was superseded by the Wright-Bridgford Act (California Statutes, 1897, p. 254). In that Act, Sections 18 and 29 include the identical language quoted above.

A long line of cases in the California courts have left no doubt that it is "established law of the State that an irrigation district is trustee for the landowners within the district

and limited in its trust to receive and distribute water to them."

Merchants National Bank v. Escondido Irr. Dist., 144 Cal. 329 (1904);

Tulare Irr. Dist. v. Collins, 154 Cal. 440, 97 P. 1124 (1908);

Hall v. Superior Court, 198 Cal. 373, 245 P. 813 (1925);

Lindsay-Strathmore Irr. Dist. v. Wutchumna Water Co., 111 CA 688, 296 P 933 (1931);

Allen v. Hussey, 101 C.A. 2d 457, 225 P. 2d 674 (1951).

In 26 Cal. Jur. 409, which bears a copyright date of 1926 and is an authoritative source of California law, the following appears:

> "The property and water rights of an irrigation district are held by it in trust for the purposes for which it was created, namely, the irrigation of lands within the district, the legal title being in the district, and the beneficial title being in the owners of land within its boundaries."

Thus, this rule was in existence in California when the Reclamation Act was passed and has never been changed.

b.

The long-standing rule discussed in the previous subsection was available to the legal profession throughout the years since irrigation on a cooperative scale commenced in California; it is incredible that the numerous counsel of the Bureau of Reclamation were unaware of its existence. The most casual study of California irrigation district law brings it to light. Certainly the administrative agency was not taken by surprise and under the circumstances did not

take the steps prescribed by Congress in Section 12 of the Reclamation Extension Act to avoid controversies such as the present.

c.

The Reclamation Extension Act of August 13, 1914 (38 Stat. 686) in its Section 12, directs the Secretary of the Interior as follows:

> "That before any contract is let or work begun for the construction of any reclamation project hereafter adopted, the Secretary of the Interior shall require the owners of private lands thereunder to agree to dispose of all lands in excess of the area which he shall deem sufficient for the support of a family upon the land in question upon such terms and at not to exceed such price as the Secretary of the Interior may designate; and if any landowner shall refuse to agree to the requirements fixed by the Secretary of the Interior, his land shall not be included within the project if adopted for construction."

This particular provision is still law and is carried by the Bureau of Reclamation in its volume entitled "Federal Reclamation Laws, Annotated." It has never been repealed and mere failure of the executive branch to enforce it does not result in its modification or repeal. See *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 73 S. Ct. 1007. The fair conclusion from this lack of action under this specific direction from Congress is that the Central Valley development was not regarded at the time of its initiation as a true Reclamation Project.

This fact points up again the completely *sui generis* nature of the Central Valley Project. It has no boundaries and it is doubtful if any definite criteria exist for their determination. While this Court realistically recognized the realistic approach of Congress to the improvement, the

private citizens affected were left completely at sea as to their rights and expectations. Born an NRA project, it was baptized as a navigational and flood control development and converted to a reclamation project in later life. It spent a few years as an operation of the Water Project Authority for which the Bureau of Reclamation was to build the project. At no time did anyone really know where they stood nor which way to turn to protect their rights.

It may be pointed out in this connection that the only Congressional affirmative authorization the Central Valley Project ever had was that given in 1937 in the River and Harbor Act of that year (50 Stat. 844, 850), wherein it:

> "Provided further, that the entire Central Valley Project, California, heretofore authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the first Deficiency Appropriation Act, Fiscal Year 1936 (49 Stat. 1622), is hereby reauthorized and declared to be for the purpose of improving navigation, regulating the flow of the San Joaquin River and the Sacramento River, controlling floods, providing for storage and for the delivery of the stored waters thereof, for the reclamation of arid and semi-arid lands and lands of Indian Reservations and other beneficial uses, and for the generation and sale of electric energy as a means of financially aiding and assisting such undertakings and in order to permit the full utilization of the works constructed to accomplish the aforesaid purposes; provided, the provisions of the Reclamation law, as amended, shall govern the repayment of the expenditures and the construction, operation, and maintenance of the dams, canals, power plants, pumping plants, transmission lines, and incidental works deemed necessary to said entire project, and the Secretary of the Interior may enter into repayment contracts, and other necessary contracts with State agencies, authorities,

associations, persons, and corporations, either public or private, including all agencies with which contracts are authorized under Reclamation law * * *; and, provided further, That the said dam and resevoirs shall be used, first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses; and third, for power * * * "

It may be noted that, until the final conversion of the improvement into an orthodox Reclamation Project about 1944, the question of the application of acreage limitation was still undecided. During the late '30s, the Project was being built for California's Water Project Authority. The proposition of changing the character of a Project after it is well started and injecting acreage limitation and other objectionable features into its operation lacks equity.

d.

The Central Valley Project, as shown by all the reports and evidence of record, was designed and has been constructed to provide a supplemental supply of irrigation water to areas of need. All of these areas already had some irrigation water but not to meet their requirements. The supplemental supply was intended to fill out their shortages and save the agricultural developments on some 1,000,000 acres approaching abandonment. This is shown in the Feasibility Report referred to on page 23.

As a matter of practical operation, the original and supplemental water supplies must be mingled for efficient distribution and the acreage limitation is applied to both supplies.

e.

All of the water rights now held by the Bureau of Reclamation in the Central Valley Project were voluntarily

acquired by the Bureau under the water laws of the State of California and all were acquired "for the use and benefit of the Central Valley Project." In other words, the water rights acquired are under California law subject to a trust which as a matter of law, the Bureau also accepted.

What appellants are here seeking is to have this Court relieve the Bureau of Reclamation of this voluntarily accepted trust.

CONCLUSION

For the reasons shown:

a. The Judgment appealed from rests on adequate non-federal grounds and the appeal does not present a substantial Federal question, and

b. Federal law and equitable considerations provide ample support for the judgment.

c. It follows that the judgment appealed from should be affirmed.

Respectfully submitted,

EDSON ABEL
Attorney for American Farm Bureau Federation California Farm Bureau Federation

Of Counsel:

ALLEN LAUTERBACH
2300 Merchandise Mart
Chicago 54, Illinois
General Counsel, American Farm Bureau Federation

(Appendix Follows)

Appendix

EDMUND G. BROWN, Attorney General
of the State of California
B. ABBOTT GOLDBERG, Deputy Attorney General
ADOLPHUS MOSKOVITZ, Deputy Attorney General
600 State Building
San Francisco 2, California
Telephone No. UNderhill 1-8700
Attorneys for Appellants

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 122

THE IVANHOE IRRIGATION DISTRICT,
Plaintiff and Appellant,

vs.

ALL PARTIES AND PERSONS, etc.,
Defendants,

THE STATE OF CALIFORNIA,
Defendant and Appellant,

COURTNEY McCRACKEN,
Defendant and Appellee.

Consent to Filing of an Amicus Curiae Brief in Opposition to the Merits on Appeal

The State of California and the Ivanhoe Irrigation District, the appellants herein, hereby consent to the filing of an amicus curiae brief by Edson Abel, Esq. Such brief is to be filed in opposition to appellants' brief on the merits on appeal, and is to be served on appellants not later than the date the appellees' briefs on the merits are due for filing and service. Such brief is to be filed on behalf of the Cali-

fornia Farm Bureau Federation and the American Farm Bureau Federation.

Dated: San Francisco, California,
March 10, 1958.

EDMUND G. BROWN,
Attorney General of the
State of California

/s/ EDMUND G. (PAT) BROWN
Attorney for Appellants

HARRY W. HORTON
Attorney at Law
Suite 101, Law Building
El Centro, California
Attorney for Appellees

In the Supreme Court of the United States

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THE IVANHOE IRRIGATION DISTRICT,
Plaintiff and Appellant,

vs.

ALL PARTIES AND PERSONS, etc.,
Defendants,

THE STATE OF CALIFORNIA,
Defendant and Appellant,

COURTNEY McCRACKEN,
Defendant and Appellee.

Consent to Filing of an Amicus Curiae Brief in Support of Appellee on the Merits on Appeal

Appellees hereby consent to the filing of an amicus curiae brief by Edson Abel, Esq. Such brief is to be filed in support of appellees' brief on the merits on appeal, and is to be served on the parties not later than the date the appellees' briefs on the merits are due for filing and service. Such brief is to be filed on behalf of the California Farm Bureau Federation and the American Farm Bureau Federation.

Dated: San Francisco, California
March 14, 1958

HARRY W. HORTON

/s/ HARRY W. HORTON
Attorney for Appellees